

REMARKS

Favorable reconsideration of this application in light of the following discussion is respectfully requested. Claims 1 and 3-22 are pending in this case. No new matter is added.

The outstanding Official Action rejected Claims 1, 3-9 and 19 under 35 U.S.C. § 103 as unpatentable over Shearer (U.S. Publication 2003/0058826, hereinafter Shearer) in view of Hayashi et al. (U.S. Publication 2004/0114555, hereinafter Hayashi); Claims 10 and 11 stand rejected under 35 U.S.C. § 103 as being unpatentable over Shearer in view of Hayashi and further in view of Haartsen (U.S. Patent No. 6,576,266); Claim 12 stands rejected under 35 U.S.C. § 103 as being unpatentable over Shearer in view of Hayashi and in further view of Haartsen and in further view of Chari et al. (U.S. Patent 6,704,301, hereinafter Chari); Claims 13-18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Shearer in view of Hayashi and further in view of Chari; and Claims 20-22 stand rejected under 35 U.S.C. § 103 as being unpatentable over Shearer in view of Hayashi and in further view of Gibbons et al. (U.S. Patent Publication 2005/0136951, hereinafter Gibbons).

Applicants note that all of the outstanding rejections rely upon the Hayashi reference. Applicants note that Hayashi qualifies as prior art under 35 U.S.C. § 102(e) as the present application filing date predates the publication date of Hayashi. To the extent the rejections above apply to the present claims, Applicants respectfully traverse the rejections.

As Hayashi is 102(e) art, the outstanding obviousness rejections of the pending claims are deficient under 35 U.S.C. § 103(c) as outlined below.

Applicants submit that the present application and the Hayashi reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to NTT DoCoMo, Inc. Accordingly, application of the Hayashi reference in this obviousness rejection is improper.

As all the rejections of record rely on Hayashi, Applicants respectfully submit these rejections are traversed as Hayashi may not be applied as a basis for supporting a *prima facie* case of obviousness as outlined by 35 U.S.C. § 103(c).

CONCLUSION

Accordingly, the outstanding rejections are traversed and the pending claims are believed to be in condition for formal allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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